



January 17, 2008

SENATE BILL No. 19

DIGEST OF SB 19 (Updated January 15, 2008 3:10 pm - DI 44)

Citations Affected: IC 6-2.5; IC 6-3; IC 6-3.1; IC 6-3.5; IC 6-5.5; IC 6-7; IC 6-8.1; noncode.

Synopsis: Various tax matters. Provides that a person taking flying lessons pays sales tax on the rental of the plane but not for the flight instructor's costs. Requires sales tax returns to be filed on a monthly basis even if the taxpayer files using electronic funds transfer (EFT). Increases the sales tax filing threshold so that if the annual liability is less than \$1,000, the taxpayer files only an annual return (instead of a monthly, quarterly, or semiannual return). Specifies that the amount of a bad debt deduction from the sales tax that may be claimed by a purchaser of accounts receivable is the amount paid by the purchaser for those receivables (not their face value). Provides that if a taxpayer makes a nonqualified withdrawal from a college choice education plan and is a nonresident who has no current tax liability, the department of state revenue (department) shall bill the taxpayer for the amount of any tax credit to be recaptured. Imposes a penalty of \$50 per return (not to exceed \$25,000 per year) on a professional preparer who does not file individual income tax returns electronically and has filed more than 100 returns. Provides an "opt out" exception for individuals over 65 years of age who do not want their return filed electronically. Requires wage withholding payments and estimated tax payments for nonresident aliens to be computed based on the application of not more than one personal exclusion. Requires employers to report to the department of state revenue the amount of withholdings attributable to local income taxes each time the employer remits to the department the tax that is withheld. Requires an individual filing an estimated tax return to designate the portion of the estimated tax payment that

(Continued next page)

Effective: January 1, 2008 (retroactive); July 1, 2008; January 1, 2009.

Kenley, Meeks, Mrvan

November 20, 2007, read first time and referred to Committee on Tax and Fiscal Policy. January 16, 2008, amended, reported favorably — Do Pass.

SB 19—LS 6282/DI 73+



C
o
p
y

represents state income tax liability and the portion of the estimated tax payment that represents local income tax liability. Provides that if an individual requests the payor of a distribution to withhold taxes from the distribution, the individual must designate the portion of the withheld amount that represents state income tax liability and the portion of the withheld amount that represents local income tax liability. Requires the department and the office of management and budget to develop certain reports and procedures to ensure that local option income taxes are accurately distributed. Reduces the state earned income tax credit for partial year nonresidents who have taxable income in other states. For purposes of the financial institutions tax, requires taxpayers to add back dividends paid to shareholders of a captive real estate investment trust. Requires a cigarette distributor to be current in all listed taxes before a distributor's license may be issued or renewed. Requires cigarette tax payments via EFT if the distributor purchases the stamps on credit. Permits the department to disclose information concerning taxpayers to state and local law enforcement officials in Indiana when used for official purposes and requested by the proper authorities. Imposes a penalty on certain individuals for failure to file an income tax return. Provides that the penalties for bad checks issued to pay listed taxes also apply to payments made by credit card and electronic payments.

**C
o
p
y**



January 17, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 19

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2008]: **Sec. 16. (a) This section applies to transactions occurring**
4 **after June 30, 2008.**

5 **(b) A person is a retail merchant making a retail transaction**
6 **when the person:**

7 **(1) leases an aircraft to another person; and**

8 **(2) provides flight instruction services to the lessee during the**
9 **term of the lease.**

10 **(c) The amount of the gross retail income attributable to a retail**
11 **transaction described in subsection (b) is the amount charged by**
12 **the lessor for the lease of the aircraft used in conjunction with the**
13 **flight instruction services provided to the lessee.**

14 SECTION 2. IC 6-2.5-6-1, AS AMENDED BY P.L.211-2007,
15 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JANUARY 1, 2009]: **Sec. 1. (a) Except as otherwise provided in this**
17 **section, each person liable for collecting the state gross retail or use tax**



C
o
p
y

shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month. A person shall file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

(b) If a person files a combined sales and withholding tax report and either this section or IC 6-3-4-8.1 requires sales or withholding tax reports to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.

(c) Instead of the twelve (12) monthly reporting periods required by subsection (a), the department may permit a person to divide a year into a different number of reporting periods. The return and payment for each reporting period is due not more than twenty (20) days after the end of the period.

(d) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering

(1) a calendar year, if the retail merchant's ~~average monthly~~ state gross retail and use tax liability in the previous calendar year does not exceed ~~ten dollars (\$10)~~;

(2) a calendar half year, if the retail merchant's ~~average monthly state gross retail and use tax liability in the previous calendar year~~ does not exceed twenty-five dollars (\$25); or

(3) a calendar quarter, if the retail merchant's ~~average monthly state gross retail and use tax liability in the previous calendar year~~ does not exceed seventy-five dollars (\$75).

one thousand dollars (\$1,000). A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

C
o
p
y



(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income tax, over a fiscal year ~~or fiscal quarter~~ not corresponding to the calendar year, ~~or calendar quarter~~, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal ~~period~~ year that corresponds to the calendar ~~period~~ year the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.

(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:

- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

~~(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter.~~

~~(i)~~ (h) A person:

- (1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;
- (2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and
- (3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);

is not required to file a monthly gross retail and use tax return.

SECTION 3. IC 6-2.5-6-9, AS AMENDED BY P.L.162-2006,

C
o
p
y



SECTION 23, AND AS AMENDED BY P.L.184-2006, SECTION 2,
IS CORRECTED AND AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: Sec. 9. (a) In determining the amount of
state gross retail and use taxes which a retail merchant must remit
under section 7 of this chapter, the retail merchant shall, subject to
subsections (c) and (d), deduct from the retail merchant's gross retail
income from retail transactions made during a particular reporting
period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant
did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant
has previously paid the state gross retail or use tax liability to the
department; and
- (3) were written off as an uncollectible debt for federal tax
purposes under Section 166 of the Internal Revenue Code during
the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a)
and subsequently collects all or part of that receivable, then the retail
merchant shall, subject to subsection ~~(d)(6)~~, **(d)(7)**, include the amount
collected as part of the retail merchant's gross retail income from retail
transactions for the particular reporting period in which the retail
merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after
~~June 30, 2007~~, *December 31, 2006*. As used in this subsection,
"affiliated group" means any combination of the following:

- (1) An affiliated group within the meaning provided in Section
1504 of the Internal Revenue Code, except that the ownership
percentage in Section 1504(a)(2) of the Internal Revenue Code
shall be determined using fifty percent (50%) instead of eighty
percent (80%).
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19),
including limited liability companies and limited liability
partnerships, that have the same degree of mutual ownership as
an affiliated group described in subdivision (1), as determined
under the rules adopted by the department.

The right to a deduction under this section is not assignable to an
individual or entity that is not part of the same affiliated group as the
assignor.

(d) The following provisions apply to a deduction for a receivable
treated as uncollectible debt under subsection (a):

- (1) A purchaser of accounts receivable that become
uncollectible during a taxable year is entitled to a deduction**

C
o
p
y



based on the price paid for the receivables but not on their face value.

~~(1)~~ **(2)** The deduction does not include interest.

~~(2)~~ **(3)** The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

(A) financing charges or interest;

(B) sales or use taxes charged on the purchase price;

(C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

(D) expenses incurred in attempting to collect any debt; and

(E) repossessed property.

~~(3)~~ **(4)** The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

~~(4)~~ **(5)** If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

~~(5)~~ **(6)** If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

~~(6)~~ **(7)** For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any

C
o
p
y



other charges.

~~(7)~~(8) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 4. IC 6-3-3-12, AS AMENDED BY P.L.211-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

C
o
p
y



(h) As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

(i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

- (1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(j) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(k) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(l) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(m) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the account; or
- (2) the excess of:

(A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over

(B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

(n) Any required repayment under subsection (m) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(o) A nonresident account owner who is not required to file an annual income tax return for a taxable year in which a

C
o
p
y



1 nonqualified withdrawal is made shall make any required
 2 repayment on the form required under IC 6-3-4-1(2). If the
 3 nonresident account owner does not make the required repayment,
 4 the department shall issue a demand notice in accordance with
 5 IC 6-8.1-5-1.

6 ~~(o)~~ (p) The executive director of the Indiana education savings
 7 authority shall submit or cause to be submitted to the department a
 8 copy of all information returns or statements issued to account owners,
 9 account beneficiaries, and other taxpayers for each taxable year with
 10 respect to:

11 (1) nonqualified withdrawals made from accounts of a college
 12 choice 529 education savings plan for the taxable year; or

13 (2) account closings for the taxable year.

14 SECTION 5. IC 6-3-4-1.5, AS ADDED BY P.L.211-2007,
 15 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JANUARY 1, 2009]: Sec. 1.5. (a) **Except as provided by subsection**
 17 **(b), if a professional preparer files more than one hundred (100) returns**
 18 **in a calendar year for persons described in section 1(1) or 1(2) of this**
 19 **chapter, in the immediately following calendar year the professional**
 20 **preparer shall file returns for persons described in section 1(1) or 1(2)**
 21 **of this chapter in an electronic format specified by the department.**

22 **(b) A professional preparer described in subsection (a) is not**
 23 **required to file a return in an electronic format if:**

24 **(1) the taxpayer or taxpayer's spouse claims the additional**
 25 **exemption for the elderly under IC 6-3-1-3.5(a)(4)(B); and**

26 **(2) the taxpayer requests in writing that the return not be**
 27 **filed in an electronic format.**

28 **Returns filed by a professional preparer under this subsection shall**
 29 **not be used in determining the professional preparer's requirement**
 30 **to file returns in an electronic format.**

31 **(c) A professional preparer who does not comply with**
 32 **subsection (a) is subject to a penalty of fifty dollars (\$50) for each**
 33 **return not filed in an electronic format, with a maximum penalty**
 34 **of twenty-five thousand dollars (\$25,000) per calendar year.**

35 SECTION 6. IC 6-3-4-4.1, AS AMENDED BY P.L.211-2007,
 36 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JANUARY 1, 2009]: Sec. 4.1. (a) Any individual required by the
 38 Internal Revenue Code to file estimated tax returns and to make
 39 payments on account of such estimated tax shall file estimated tax
 40 returns and make payments of the tax imposed by this article to the
 41 department at the time or times and in the installments as provided by
 42 Section 6654 of the Internal Revenue Code. However, **the following**

C
o
p
y



apply to estimated tax returns filed and payments made under this subsection:

(1) In applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by IC 6-3-3.

(2) Estimated tax for a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) must be computed by applying not more than one (1) exclusion under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4), regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final return for the taxable year.

(b) Every individual who has adjusted gross income subject to the tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than one thousand dollars (\$1,000). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed

**C
o
p
y**



by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year.

(e) The provisions of subsection (c) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by IC 6-3-3-2 (repealed), shall exceed two thousand five hundred dollars (\$2,500) for its taxable year.

(f) If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), after the credit allowed by IC 6-3-3-2 (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(g) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

(h) An individual filing an estimated tax return and making an estimated tax payment under this section must designate:

(1) the portion of the estimated tax payment that represents estimated state adjusted gross income tax liability; and

(2) the portion of the estimated tax payment that represents estimated local income tax liability under IC 6-3.5.

The department shall adopt guidelines and issue instructions as necessary to assist individuals in making the designations required

C
o
p
y



by this subsection.

SECTION 7. IC 6-3-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 8. (a) Except as provided in subsection (d) or (l), every employer making payments of wages subject to tax under this article, regardless of the place where such payment is made, who is required under the provisions of the Internal Revenue Code to withhold, collect, and pay over income tax on wages paid by such employer to such employee, shall, at the time of payment of such wages, deduct and retain therefrom the amount prescribed in withholding instructions issued by the department. The department shall base its withholding instructions on the adjusted gross income tax rate for persons, on the total rates of any income taxes that the taxpayer is subject to under IC 6-3.5, and on the total amount of exclusions the taxpayer is entitled to under IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4). **However, the withholding instructions on the adjusted gross income of a nonresident alien (as defined in Section 7701 of the Internal Revenue Code) are to be based on applying not more than one (1) withholding exclusion, regardless of the total number of exclusions that IC 6-3-1-3.5(a)(3) and IC 6-3-1-3.5(a)(4) permit the taxpayer to apply on the taxpayer's final return for the taxable year.** Such employer making payments of any wages:

(1) shall be liable to the state of Indiana for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from the individual's wages and paid over in compliance or intended compliance with this section; and

(2) shall make return of and payment to the department monthly of the amount of tax which under this article and IC 6-3.5 the employer is required to withhold.

(b) An employer shall pay taxes withheld under subsection (a) during a particular month to the department no later than thirty (30) days after the end of that month. However, in place of monthly reporting periods, the department may permit an employer to report and pay the tax for:

(1) a calendar year reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed ten dollars (\$10);

(2) a six (6) month reporting period, if the average monthly amount of all tax required to be withheld by the employer in the previous calendar year does not exceed twenty-five dollars (\$25);

or

(3) a three (3) month reporting period, if the average monthly

C
o
p
y



1 amount of all tax required to be withheld by the employer in the
 2 previous calendar year does not exceed seventy-five dollars (\$75).
 3 An employer using a reporting period (other than a monthly reporting
 4 period) must file the employer's return and pay the tax for a reporting
 5 period no later than the last day of the month immediately following
 6 the close of the reporting period. If an employer files a combined sales
 7 and withholding tax report, the reporting period for the combined
 8 report is the shortest period required under this section, section 8.1 of
 9 this chapter, or IC 6-2.5-6-1.

10 (c) For purposes of determining whether an employee is subject to
 11 taxation under IC 6-3.5, an employer is entitled to rely on the statement
 12 of an employee as to the employee's county of residence as represented
 13 by the statement of address in forms claiming exemptions for purposes
 14 of withholding, regardless of when the employee supplied the forms.
 15 Every employee shall notify the employee's employer within five (5)
 16 days after any change in the employee's county of residence.

17 (d) A county that makes payments of wages subject to tax under this
 18 article:

19 (1) to a precinct election officer (as defined in IC 3-5-2-40.1); and
 20 (2) for the performance of the duties of the precinct election
 21 officer imposed by IC 3 that are performed on election day;
 22 is not required, at the time of payment of the wages, to deduct and
 23 retain from the wages the amount prescribed in withholding
 24 instructions issued by the department.

25 (e) Every employer shall, at the time of each payment made by the
 26 employer to the department, deliver to the department a return upon the
 27 form prescribed by the department showing:

28 (1) the total amount of wages paid to the employer's employees;
 29 (2) the amount deducted therefrom in accordance with the
 30 provisions of the Internal Revenue Code;
 31 (3) the amount of adjusted gross income tax deducted therefrom
 32 in accordance with the provisions of this section;
 33 (4) the amount of income tax, if any, imposed under IC 6-3.5 and
 34 deducted therefrom in accordance with this section; and
 35 (5) any other information the department may require.

36 Every employer making a declaration of withholding as provided in this
 37 section shall furnish the employer's employees annually, but not later
 38 than thirty (30) days after the end of the calendar year, a record of the
 39 total amount of adjusted gross income tax and the amount of each
 40 income tax, if any, imposed under IC 6-3.5, withheld from the
 41 employees, on the forms prescribed by the department.

42 (f) All money deducted and withheld by an employer shall

C
o
p
y



1 immediately upon such deduction be the money of the state, and every
 2 employer who deducts and retains any amount of money under the
 3 provisions of this article shall hold the same in trust for the state of
 4 Indiana and for payment thereof to the department in the manner and
 5 at the times provided in this article. Any employer may be required to
 6 post a surety bond in the sum the department determines to be
 7 appropriate to protect the state with respect to money withheld pursuant
 8 to this section.

9 (g) The provisions of IC 6-8.1 relating to additions to tax in case of
 10 delinquency and penalties shall apply to employers subject to the
 11 provisions of this section, and for these purposes any amount deducted
 12 or required to be deducted and remitted to the department under this
 13 section shall be considered to be the tax of the employer, and with
 14 respect to such amount the employer shall be considered the taxpayer.
 15 In the case of a corporate or partnership employer, every officer,
 16 employee, or member of such employer, who, as such officer,
 17 employee, or member is under a duty to deduct and remit such taxes
 18 shall be personally liable for such taxes, penalties, and interest.

19 (h) Amounts deducted from wages of an employee during any
 20 calendar year in accordance with the provisions of this section shall be
 21 considered to be in part payment of the tax imposed on such employee
 22 for the employee's taxable year which begins in such calendar year, and
 23 a return made by the employer under subsection (b) shall be accepted
 24 by the department as evidence in favor of the employee of the amount
 25 so deducted from the employee's wages. Where the total amount so
 26 deducted exceeds the amount of tax on the employee as computed
 27 under this article and IC 6-3.5, the department shall, after examining
 28 the return or returns filed by the employee in accordance with this
 29 article and IC 6-3.5, refund the amount of the excess deduction.
 30 However, under rules promulgated by the department, the excess or any
 31 part thereof may be applied to any taxes or other claim due from the
 32 taxpayer to the state of Indiana or any subdivision thereof. No refund
 33 shall be made to an employee who fails to file the employee's return or
 34 returns as required under this article and IC 6-3.5 within two (2) years
 35 from the due date of the return or returns. In the event that the excess
 36 tax deducted is less than one dollar (\$1), no refund shall be made.

37 (i) This section shall in no way relieve any taxpayer from the
 38 taxpayer's obligation of filing a return or returns at the time required
 39 under this article and IC 6-3.5, and, should the amount withheld under
 40 the provisions of this section be insufficient to pay the total tax of such
 41 taxpayer, such unpaid tax shall be paid at the time prescribed by
 42 section 5 of this chapter.

C
o
p
y



(j) Notwithstanding subsection (b), an employer of a domestic service employee that enters into an agreement with the domestic service employee to withhold federal income tax under Section 3402 of the Internal Revenue Code may withhold Indiana income tax on the domestic service employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(k) To the extent allowed by Section 1137 of the Social Security Act, an employer of a domestic service employee may report and remit state unemployment insurance contributions on the employee's wages on the employer's Indiana individual income tax return in the same manner as allowed by Section 3510 of the Internal Revenue Code.

(l) The department shall adopt rules under IC 4-22-2 to exempt an employer from the duty to deduct and remit from the wages of an employee adjusted gross income tax withholding that would otherwise be required under this section whenever:

(1) an employee has at least one (1) qualifying child, as determined under Section 32 of the Internal Revenue Code;

(2) the employee is eligible for an earned income tax credit under IC 6-3.1-21;

(3) the employee elects to receive advance payments of the earned income tax credit under IC 6-3.1-21 from money that would otherwise be withheld from the employee's wages for adjusted gross income taxes; and

(4) the amount that is not deducted and remitted is distributed to the employee, in accordance with the procedures prescribed by the department, as an advance payment of the earned income tax credit for which the employee is eligible under IC 6-3.1-21.

The rules must establish the procedures and reports required to carry out this subsection.

(m) A person who knowingly fails to remit trust fund money as set forth in this section commits a Class D felony.

SECTION 8. IC 6-3-4-15.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 15.7. (a) The payor of a periodic or nonperiodic distribution under an annuity, a pension, a retirement, or other deferred compensation plan, as described in Section 3405 of the Internal Revenue Code, that is paid to a resident of this state shall, upon receipt from the payee of a written request for state income tax withholding, withhold the requested amount from each payment. The request must:

(1) be dated and signed by the payee; ~~and~~

(2) specify the flat whole dollar amount to be withheld from each

C
o
p
y



1 payment; ~~The request must also~~

2 **(3) designate the portion of the withheld amount that**
 3 **represents estimated state adjusted gross income tax liability**
 4 **and the portion of the withheld amount that represents**
 5 **estimated local income tax liability under IC 6-3.5; and**

6 **(4) specify the payee's name, current address, taxpayer**
 7 **identification number, and the contract, policy, or account number**
 8 **to which the request applies.**

9 The request shall remain in effect until the payor receives in writing
 10 from the payee a change in or revocation of the request. **The**
 11 **department shall adopt guidelines and issue instructions as**
 12 **necessary to assist individuals in making the designations required**
 13 **by subdivision (3).**

14 (b) The payor is not required to withhold state income tax from a
 15 payment if the amount to be withheld is less than ten dollars (\$10) or
 16 if the amount to be withheld would reduce the affected payment to less
 17 than ten dollars (\$10).

18 (c) The payor is responsible for custody of withheld funds, for
 19 reporting withheld funds to the state and to the payee, and for remitting
 20 withheld funds to the state in the same manner as is done for wage
 21 withholding, including utilization of federal forms and participation by
 22 Indiana in the combined Federal/State Filing Program on magnetic
 23 media.

24 SECTION 9. IC 6-3-4-16 IS ADDED TO THE INDIANA CODE
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 26 1, 2008]: **Sec. 16. (a) For individual income tax returns filed after**
 27 **December 31, 2010, the department shall develop procedures to**
 28 **implement a system of crosschecks between:**

29 **(1) employer WH-3 forms (annual withholding tax reports)**
 30 **with accompanying W-2s; and**

31 **(2) individual taxpayer W-2 forms.**

32 **(b) The department and the office of management and budget**
 33 **shall develop reports and procedures to ensure that income taxes**
 34 **imposed under IC 6-3.5 are accurately and properly distributed to**
 35 **each county.**

36 SECTION 10. IC 6-3.1-21-6 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 6. (a) Except as**
 38 **provided by subsection (b), an individual who is eligible for an earned**
 39 **income tax credit under Section 32 of the Internal Revenue Code is**
 40 **eligible for a credit under this chapter equal to six percent (6%) of the**
 41 **amount of the federal earned income tax credit that the individual:**

42 **(1) is eligible to receive in the taxable year; and**

C
O
P
Y



(2) claimed for the taxable year;
under Section 32 of the Internal Revenue Code.

(b) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the amount of the credit is equal to the product of:

- (1) the amount determined under subsection (a); multiplied by**
- (2) the quotient of the taxpayer's income taxable in Indiana divided by the taxpayer's total income.**

~~(b)~~ **(c)** If the credit amount exceeds the taxpayer's adjusted gross income tax liability for the taxable year, the excess, less any advance payments of the credit made by the taxpayer's employer under IC 6-3-4-8 that reduce the excess, shall be refunded to the taxpayer.

SECTION 11. IC 6-3.5-1.1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) remittances;
- (5) incorporation of the provisions of the Internal Revenue Code;
- (6) penalties and interest;
- (7) exclusion of military pay credits for withholding; and
- (8) exemptions and deductions;

apply to the imposition, collection, and administration of the tax imposed by this chapter.

(b) The provisions of IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount of withholdings attributable to each county. This report shall be submitted **to the department:**

- (1) each time the employer remits to the department the tax that is withheld; and**
- (2) annually along with the employer's annual withholding report.**

SECTION 12. IC 6-3.5-6-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 22. (a) Except as otherwise provided in subsection (b) and the other provisions of this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;

C
o
p
y



- (4) deductions or exemptions from adjusted gross income;
- (5) remittances;
- (6) incorporation of the provisions of the Internal Revenue Code;
- (7) penalties and interest; and
- (8) exclusion of military pay credits for withholding;

apply to the imposition, collection, and administration of the tax imposed by this chapter.

(b) The provisions of IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount of withholdings attributable to each county. This report shall be submitted **to the department:**

(1) each time the employer remits to the department the tax that is withheld; and

(2) along with the employer's other withholding report.

SECTION 13. IC 6-3.5-7-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 18. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;
- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) remittances;
- (5) incorporation of the provisions of the Internal Revenue Code;
- (6) penalties and interest;
- (7) exclusion of military pay credits for withholding; and
- (8) exemptions and deductions;

apply to the imposition, collection, and administration of the tax imposed by this chapter.

(b) The provisions of ~~IC~~ IC 6-3-1-3.5(a)(6), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the tax imposed by this chapter.

(c) Notwithstanding subsections (a) and (b), each employer shall report to the department the amount of withholdings attributable to each county. This report shall be submitted **to the department:**

(1) each time the employer remits to the department the tax that is withheld; and

(2) annually along with the employer's annual withholding report.

SECTION 14. IC 6-3.5-8-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 22. (a) Except as otherwise provided in this chapter, all provisions of the adjusted gross income tax law (IC 6-3) concerning:

- (1) definitions;

C
o
p
y



- (2) declarations of estimated tax;
- (3) filing of returns;
- (4) remittances;
- (5) incorporation of the provisions of the Internal Revenue Code;
- (6) penalties and interest;
- (7) exclusion of military pay credits for withholding; and
- (8) exemptions and deductions;

apply to the imposition, collection, and administration of the municipal option income tax. The municipal option income tax is a listed tax and an income tax for purposes of IC 6-8.1.

(b) The provisions of IC 6-3-1-3.5(a)(5), IC 6-3-3-3, IC 6-3-3-5, and IC 6-3-5-1 do not apply to the municipal option income tax.

(c) Each employer shall report to the department the amount of withholdings attributable to each municipality. This report shall annually be submitted **to the department:**

(1) each time the employer remits to the department the tax that is withheld; and

(2) with the employer's withholding report.

SECTION 15. IC 6-5.5-1-2, AS AMENDED BY P.L.223-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

(A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.

(B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

C
o
p
y



(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) Add the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(I) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(J) Add an amount equal to a deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 21 of this chapter).

(2) Subtract the following amounts:

(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are

C
o
p
y



included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation.

(F) The amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(G) Income that is:

- (i) exempt from taxation under IC 6-3-2-21.7; and
- (ii) included in the taxpayer's taxable income under the Internal Revenue Code.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:

(1) the aggregate of the gross payments collected by the company during the taxable year from old and new business upon investment contracts issued by the company and held by residents of Indiana; divided by

(2) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:

**C
o
p
y**



(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

- (A) a so-called bond;
- (B) a share;
- (C) a coupon;
- (D) a certificate of membership;
- (E) an agreement;
- (F) a pretended agreement; or
- (G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 16. IC 6-5.5-1-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 21. (a) Except as provided in subsection (b), "captive real estate investment trust" means a corporation, a trust, or an association:**

- (1) that is considered a real estate investment trust for the taxable year under Section 856 of the Internal Revenue Code;
- (2) that is not regularly traded on an established securities market; and
- (3) in which more than fifty percent (50%) of the:

- (A) voting power;
- (B) beneficial interests; or
- (C) shares;

are owned or controlled, directly or constructively, by a single entity that is subject to Subchapter C of Chapter 1 of the Internal Revenue Code.

(b) The term does not include a corporation, a trust, or an association in which more than fifty percent (50%) of the entity's voting power, beneficial interests, or shares are owned by a single

C
o
p
y



entity described in subsection (a)(3) that is owned or controlled, directly or constructively, by:

(1) a corporation, a trust, or an association that is considered a real estate investment trust under Section 856 of the Internal Revenue Code;

(2) a person exempt from taxation under Section 501 of the Internal Revenue Code; or

(3) a real estate investment trust that:

(A) is intended to become regularly traded on an established securities market; and

(B) satisfies the requirements of Section 856(a)(5) and 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code.

(c) For purposes of this section, the constructive ownership rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code, apply to the determination of the ownership of stock, assets, or net profits of any person.

SECTION 17. IC 6-7-1-17, AS AMENDED BY P.L.218-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of one and two-tenths cents (\$0.012) per individual package of cigarettes as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the privilege is extended upon the express condition that:

(1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; and

(2) proof of payment is made of all ~~local~~ property taxes, state income, and excise taxes, and listed taxes (as defined in IC 6-8.1-1-1) for which any such distributor may be liable; and

(3) payment for the revenue stamps must be made by electronic funds transfer (as defined in IC 4-8.1-2-7).



C
o
p
y

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

SECTION 18. IC 6-8.1-7-1, AS AMENDED BY P.L.219-2007, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and
- (2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family resources, and to any director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a)

**c
o
p
y**



relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The information described in subsection (a) may be revealed upon the receipt of a written request from the chief law enforcement officer of a state or local law enforcement agency in Indiana, when it is agreed that the information is to be confidential and to be used solely for official purposes.

~~(g)~~ (h) The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(j) may be released solely for tax collection purposes to township assessors and county assessors.

~~(h)~~ (i) The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

C
o
p
y



(j) All information relating to the delinquency or evasion of the motor vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

(k) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(l) All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

(m) This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

(n) The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

SECTION 19. IC 6-8.1-10-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 3.5. If a person fails to file a return on or before the due date as required by IC 6-3-4-1(1) or IC 6-3-4-1(2), where no remittance is due with the return, the person is subject to a penalty of ten dollars (\$10) per day for each day that the return is past due, up to a maximum of five hundred dollars (\$500).**

SECTION 20. IC 6-8.1-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) If a person makes a tax payment with a check, **credit card, debit card, or electronic funds transfer**, and the department is unable to obtain payment on the check, **credit card, debit card, or electronic funds transfer** for its

C
o
p
y



1 full face amount when the check, **credit card, debit card, or**
 2 **electronic funds transfer** is presented for payment through normal
 3 banking channels, a penalty of ten percent (10%) of the unpaid tax or
 4 the ~~face~~ value of the check, **credit card, debit card, or electronic**
 5 **funds transfer**, whichever is smaller, is imposed.

6 (b) When a penalty is imposed under subsection (a), the department
 7 shall notify the person by mail that the check, **credit card, debit card,**
 8 **or electronic funds transfer** was not honored and that the person has
 9 ten (10) days after the date the notice is mailed to pay the tax and the
 10 penalty either in cash, by certified check, or other guaranteed payment.
 11 If the person fails to make the payment within the ten (10) day period,
 12 the penalty is increased to one hundred percent (100%) multiplied by
 13 the ~~face~~ value of the check, **credit card, debit card, or electronic**
 14 **funds transfer**, or the unpaid tax, whichever is smaller.

15 (c) If the person subject to the penalty under this section can show
 16 that there is reasonable cause for the check, **credit card, debit card,**
 17 **or electronic funds transfer** not being honored, the department may
 18 waive the penalty imposed under this section.

19 SECTION 21. [EFFECTIVE JANUARY 1, 2009] IC 6-3-4-4.1,
 20 IC 6-3-4-8, IC 6-3-4-15.7, IC 6-3.5-1.1-18, IC 6-3.5-6-22,
 21 IC 6-3.5-7-18, and IC 6-3.5-8-22, all as amended by this act, apply
 22 only to taxable years beginning after December 31, 2008.

23 SECTION 22. [EFFECTIVE JANUARY 1, 2009] IC 6-2.5-6-1, as
 24 amended by this act, applies to reporting periods beginning after
 25 December 31, 2008.

26 SECTION 23. [EFFECTIVE JULY 1, 2008] IC 6-2.5-6-9, as
 27 amended by this act, is intended to be a clarification of the law and
 28 not a substantive change in the law.

29 SECTION 24. [EFFECTIVE JANUARY 1, 2008
 30 (RETROACTIVE)] IC 6-3-3-12, as amended by this act, applies to
 31 taxable years beginning after December 31, 2007.

32 SECTION 25. [EFFECTIVE JANUARY 1, 2009] IC 6-3-4-1.5, as
 33 amended by this act, applies to adjusted gross income tax returns
 34 filed after December 31, 2008.

35 SECTION 26. [EFFECTIVE JANUARY 1, 2009] IC 6-3.1-21-6
 36 and IC 6-5.5-1-2, both as amended by this act, and IC 6-5.5-1-21
 37 and IC 6-8.1-10-3.5, both as added by this act, apply to taxable
 38 years beginning after December 31, 2008.

39 SECTION 27. An emergency is declared for this act.

C
o
p
y



SENATE MOTION

Madam President: I move that Senator Meeks be added as coauthor of Senate Bill 19.

KENLEY

SENATE MOTION

Madam President: I move that Senator Mrvan be added as coauthor of Senate Bill 19.

KENLEY

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 19, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 16. (a) This section applies to transactions occurring after June 30, 2008.**

(b) A person is a retail merchant making a retail transaction when the person:

- (1) leases an aircraft to another person; and**
- (2) provides flight instruction services to the lessee during the term of the lease.**

(c) The amount of the gross retail income attributable to a retail transaction described in subsection (b) is the amount charged by the lessor for the lease of the aircraft used in conjunction with the flight instruction services provided to the lessee.

SECTION 2. IC 6-2.5-6-1, AS AMENDED BY P.L.211-2007, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 1. (a) Except as otherwise provided in this section, each person liable for collecting the state gross retail or use tax**

C
o
p
y



shall file a return for each calendar month and pay the state gross retail and use taxes that the person collects during that month. A person shall file the person's return for a particular month with the department and make the person's tax payment for that month to the department not more than thirty (30) days after the end of that month, if that person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year did not exceed one thousand dollars (\$1,000). If a person's average monthly liability for collections of state gross retail and use taxes under this section as determined by the department for the preceding calendar year exceeded one thousand dollars (\$1,000), that person shall file the person's return for a particular month and make the person's tax payment for that month to the department not more than twenty (20) days after the end of that month.

(b) If a person files a combined sales and withholding tax report and either this section or IC 6-3-4-8.1 requires sales or withholding tax reports to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20) days after the end of each month.

(c) Instead of the twelve (12) monthly reporting periods required by subsection (a), the department may permit a person to divide a year into a different number of reporting periods. The return and payment for each reporting period is due not more than twenty (20) days after the end of the period.

(d) Instead of the reporting periods required under subsection (a), the department may permit a retail merchant to report and pay the merchant's state gross retail and use taxes for a period covering

(1) a calendar year, if the retail merchant's ~~average monthly~~ state gross retail and use tax liability in the previous calendar year does not exceed ~~ten dollars (\$10)~~;

(2) a calendar half year, if the retail merchant's ~~average monthly state gross retail and use tax liability in the previous calendar year~~ does not exceed twenty-five dollars (\$25); or

(3) a calendar quarter, if the retail merchant's ~~average monthly state gross retail and use tax liability in the previous calendar year~~ does not exceed seventy-five dollars (\$75).

one thousand dollars (\$1,000). A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

C
o
p
y



(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income tax, over a fiscal year ~~or fiscal quarter~~ not corresponding to the calendar year, ~~or calendar quarter~~, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal ~~period~~ year that corresponds to the calendar ~~period~~ year the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.

(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:

- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds five thousand dollars (\$5,000), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

~~(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter.~~

~~(i)~~ (h) A person:

- (1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;
- (2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and
- (3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);

is not required to file a monthly gross retail and use tax return.

SECTION 3. IC 6-2.5-6-9, AS AMENDED BY P.L.162-2006,



C
O
P
Y

SECTION 23, AND AS AMENDED BY P.L.184-2006, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which a retail merchant must remit under section 7 of this chapter, the retail merchant shall, subject to subsections (c) and (d), deduct from the retail merchant's gross retail income from retail transactions made during a particular reporting period, an amount equal to the retail merchant's receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(d)(6)~~, **(d)(7)**, include the amount collected as part of the retail merchant's gross retail income from retail transactions for the particular reporting period in which the retail merchant makes the collection.

(c) This subsection applies only to retail transactions occurring after ~~June 30, 2007~~, *December 31, 2006*. As used in this subsection, "affiliated group" means any combination of the following:

- (1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).
- (2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a deduction under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

- (1) A purchaser of accounts receivable that become uncollectible during a taxable year is entitled to a deduction**

C
o
p
y



based on the price paid for the receivables but not on their face value.

~~(1)~~ **(2)** The deduction does not include interest.

~~(2)~~ **(3)** The amount of the deduction shall be determined in the manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

- (A) financing charges or interest;
- (B) sales or use taxes charged on the purchase price;
- (C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
- (D) expenses incurred in attempting to collect any debt; and
- (E) repossessed property.

~~(3)~~ **(4)** The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

~~(4)~~ **(5)** If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for the refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

~~(5)~~ **(6)** If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

~~(6)~~ **(7)** For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any

C
o
p
y



other charges.

~~(7)~~ (8) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

SECTION 4. IC 6-3-3-12, AS AMENDED BY P.L.211-2007, SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "nonqualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

C
o
p
y



(h) As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

(i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

- (1) Twenty percent (20%) of the amount of the total contributions made by the taxpayer to an account or accounts of a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(j) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(k) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(l) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(m) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the total amount of nonqualified withdrawals made during the taxable year from the account; or
- (2) the excess of:
 - (A) the cumulative amount of all credits provided by this section that are claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over
 - (B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

(n) Any required repayment under subsection (m) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(o) A nonresident account owner who is not required to file an annual income tax return for a taxable year in which a

C
o
p
y



nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(p) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

- (1) nonqualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year.

SECTION 5. IC 6-3-4-1.5, AS ADDED BY P.L.211-2007, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 1.5. (a) Except as provided by subsection (b), if a professional preparer files more than one hundred (100) returns in a calendar year for persons described in section 1(1) or 1(2) of this chapter, in the immediately following calendar year the professional preparer shall file returns for persons described in section 1(1) or 1(2) of this chapter in an electronic format specified by the department.

(b) A professional preparer described in subsection (a) is not required to file a return in an electronic format if:

- (1) the taxpayer or taxpayer's spouse claims the additional exemption for the elderly under IC 6-3-1-3.5(a)(4)(B); and
- (2) the taxpayer requests in writing that the return not be filed in an electronic format.

Returns filed by a professional preparer under this subsection shall not be used in determining the professional preparer's requirement to file returns in an electronic format.

(c) A professional preparer who does not comply with subsection (a) is subject to a penalty of fifty dollars (\$50) for each return not filed in an electronic format, with a maximum penalty of twenty-five thousand dollars (\$25,000) per calendar year."

Page 8, delete lines 15 through 27, begin a new paragraph and insert:

"SECTION 9. IC 6-3-4-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 16. (a) For individual income tax returns filed after December 31, 2010, the department shall develop procedures to implement a system of crosschecks between:

- (1) employer WH-3 forms (annual withholding tax reports)



C
o
p
y

with accompanying W-2s; and

(2) individual taxpayer W-2 forms.

(b) The department and the office of management and budget shall develop reports and procedures to ensure that income taxes imposed under IC 6-3.5 are accurately and properly distributed to each county."

Page 8, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 10. IC 6-3.1-21-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 6. (a) **Except as provided by subsection (b)**, an individual who is eligible for an earned income tax credit under Section 32 of the Internal Revenue Code is eligible for a credit under this chapter equal to six percent (6%) of the amount of the federal earned income tax credit that the individual:

- (1) is eligible to receive in the taxable year; and
- (2) claimed for the taxable year;

under Section 32 of the Internal Revenue Code.

(b) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the amount of the credit is equal to the product of:

- (1) the amount determined under subsection (a); multiplied by**
- (2) the quotient of the taxpayer's income taxable in Indiana divided by the taxpayer's total income.**

~~(b)~~ (c) If the credit amount exceeds the taxpayer's adjusted gross income tax liability for the taxable year, the excess, less any advance payments of the credit made by the taxpayer's employer under IC 6-3-4-8 that reduce the excess, shall be refunded to the taxpayer."

Page 10, between lines 33 and 34, begin a new paragraph and insert:

"SECTION 15. IC 6-5.5-1-2, AS AMENDED BY P.L.223-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: Sec. 2. (a) Except as provided in subsections (b) through (d), "adjusted gross income" means taxable income as defined in Section 63 of the Internal Revenue Code, adjusted as follows:

(1) Add the following amounts:

- (A) An amount equal to a deduction allowed or allowable under Section 166, Section 585, or Section 593 of the Internal Revenue Code.
- (B) An amount equal to a deduction allowed or allowable under Section 170 of the Internal Revenue Code.
- (C) An amount equal to a deduction or deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by a state of the United States or levied at the local level

C
o
p
y



by any subdivision of a state of the United States.

(D) The amount of interest excluded under Section 103 of the Internal Revenue Code or under any other federal law, minus the associated expenses disallowed in the computation of taxable income under Section 265 of the Internal Revenue Code.

(E) An amount equal to the deduction allowed under Section 172 or 1212 of the Internal Revenue Code for net operating losses or net capital losses.

(F) For a taxpayer that is not a large bank (as defined in Section 585(c)(2) of the Internal Revenue Code), an amount equal to the recovery of a debt, or part of a debt, that becomes worthless to the extent a deduction was allowed from gross income in a prior taxable year under Section 166(a) of the Internal Revenue Code.

(G) Add the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(H) Add the amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(I) Add an amount equal to the amount that a taxpayer claimed as a deduction for domestic production activities for the taxable year under Section 199 of the Internal Revenue Code for federal income tax purposes.

(J) Add an amount equal to a deduction for dividends paid (as defined in Section 561 of the Internal Revenue Code) to shareholders of a captive real estate investment trust (as defined in section 21 of this chapter).

(2) Subtract the following amounts:

C
o
p
y



(A) Income that the United States Constitution or any statute of the United States prohibits from being used to measure the tax imposed by this chapter.

(B) Income that is derived from sources outside the United States, as defined by the Internal Revenue Code.

(C) An amount equal to a debt or part of a debt that becomes worthless, as permitted under Section 166(a) of the Internal Revenue Code.

(D) An amount equal to any bad debt reserves that are included in federal income because of accounting method changes required by Section 585(c)(3)(A) or Section 593 of the Internal Revenue Code.

(E) The amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k) of the Internal Revenue Code to apply bonus depreciation.

(F) The amount necessary to make the adjusted gross income of any taxpayer that placed Section 179 property (as defined in Section 179 of the Internal Revenue Code) in service in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election for federal income tax purposes not been made for the year in which the property was placed in service to take deductions under Section 179 of the Internal Revenue Code in a total amount exceeding twenty-five thousand dollars (\$25,000).

(G) Income that is:

- (i) exempt from taxation under IC 6-3-2-21.7; and
- (ii) included in the taxpayer's taxable income under the Internal Revenue Code.

(b) In the case of a credit union, "adjusted gross income" for a taxable year means the total transfers to undivided earnings minus dividends for that taxable year after statutory reserves are set aside under IC 28-7-1-24.

(c) In the case of an investment company, "adjusted gross income" means the company's federal taxable income multiplied by the quotient of:

- (1) the aggregate of the gross payments collected by the company during the taxable year from old and new business upon

**C
o
p
y**



investment contracts issued by the company and held by residents of Indiana; divided by

(2) the total amount of gross payments collected during the taxable year by the company from the business upon investment contracts issued by the company and held by persons residing within Indiana and elsewhere.

(d) As used in subsection (c), "investment company" means a person, copartnership, association, limited liability company, or corporation, whether domestic or foreign, that:

(1) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); and

(2) solicits or receives a payment to be made to itself and issues in exchange for the payment:

- (A) a so-called bond;
- (B) a share;
- (C) a coupon;
- (D) a certificate of membership;
- (E) an agreement;
- (F) a pretended agreement; or
- (G) other evidences of obligation;

entitling the holder to anything of value at some future date, if the gross payments received by the company during the taxable year on outstanding investment contracts, plus interest and dividends earned on those contracts (by prorating the interest and dividends earned on investment contracts by the same proportion that certificate reserves (as defined by the Investment Company Act of 1940) is to the company's total assets) is at least fifty percent (50%) of the company's gross payments upon investment contracts plus gross income from all other sources except dividends from subsidiaries for the taxable year. The term "investment contract" means an instrument listed in clauses (A) through (G).

SECTION 16. IC 6-5.5-1-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 21. (a) Except as provided in subsection (b), "captive real estate investment trust" means a corporation, a trust, or an association:**

- (1) that is considered a real estate investment trust for the taxable year under Section 856 of the Internal Revenue Code;
- (2) that is not regularly traded on an established securities market; and
- (3) in which more than fifty percent (50%) of the:

C
o
p
y



- (A) voting power;
- (B) beneficial interests; or
- (C) shares;

are owned or controlled, directly or constructively, by a single entity that is subject to Subchapter C of Chapter 1 of the Internal Revenue Code.

(b) The term does not include a corporation, a trust, or an association in which more than fifty percent (50%) of the entity's voting power, beneficial interests, or shares are owned by a single entity described in subsection (a)(3) that is owned or controlled, directly or constructively, by:

- (1) a corporation, a trust, or an association that is considered a real estate investment trust under Section 856 of the Internal Revenue Code;
- (2) a person exempt from taxation under Section 501 of the Internal Revenue Code; or
- (3) a real estate investment trust that:
 - (A) is intended to become regularly traded on an established securities market; and
 - (B) satisfies the requirements of Section 856(a)(5) and 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code.

(c) For purposes of this section, the constructive ownership rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code, apply to the determination of the ownership of stock, assets, or net profits of any person.

SECTION 17. IC 6-7-1-17, AS AMENDED BY P.L.218-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of one and two-tenths cents (\$0.012) per individual package of cigarettes as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the

C
o
p
y



privilege is extended upon the express condition that:

- (1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; ~~and~~
- (2) proof of payment is made of all ~~total~~ property taxes, state income, and excise taxes, **and listed taxes (as defined in IC 6-8.1-1-1)** for which any such distributor may be liable; **and**
- (3) **payment for the revenue stamps must be made by electronic funds transfer (as defined in IC 4-8.1-2-7).**

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

SECTION 18. IC 6-8.1-7-1, AS AMENDED BY P.L.219-2007, SECTION 92, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) This subsection does not apply to the disclosure of information concerning a conviction on a tax evasion charge. Unless in accordance with a judicial order or as otherwise provided in this chapter, the department, its employees, former employees, counsel, agents, or any other person may not divulge the amount of tax paid by any taxpayer, terms of a settlement agreement executed between a taxpayer and the department, investigation records, investigation reports, or any other information disclosed by the reports filed under the provisions of the law relating to any of the listed taxes, including required information derived from a federal return, except to:

- (1) members and employees of the department;
- (2) the governor;
- (3) the attorney general or any other legal representative of the state in any action in respect to the amount of tax due under the provisions of the law relating to any of the listed taxes; or
- (4) any authorized officers of the United States;

when it is agreed that the information is to be confidential and to be used solely for official purposes.

(b) The information described in subsection (a) may be revealed upon the receipt of a certified request of any designated officer of the state tax department of any other state, district, territory, or possession of the United States when:

- (1) the state, district, territory, or possession permits the exchange of like information with the taxing officials of the state; and

C
o
p
y



(2) it is agreed that the information is to be confidential and to be used solely for tax collection purposes.

(c) The information described in subsection (a) relating to a person on public welfare or a person who has made application for public welfare may be revealed to the director of the division of family resources, and to any director of a county office of family and children located in Indiana, upon receipt of a written request from either director for the information. The information shall be treated as confidential by the directors. In addition, the information described in subsection (a) relating to a person who has been designated as an absent parent by the state Title IV-D agency shall be made available to the state Title IV-D agency upon request. The information shall be subject to the information safeguarding provisions of the state and federal Title IV-D programs.

(d) The name, address, Social Security number, and place of employment relating to any individual who is delinquent in paying educational loans owed to a postsecondary educational institution may be revealed to that institution if it provides proof to the department that the individual is delinquent in paying for educational loans. This information shall be provided free of charge to approved postsecondary educational institutions (as defined by IC 21-7-13-6(a)). The department shall establish fees that all other institutions must pay to the department to obtain information under this subsection. However, these fees may not exceed the department's administrative costs in providing the information to the institution.

(e) The information described in subsection (a) relating to reports submitted under IC 6-6-1.1-502 concerning the number of gallons of gasoline sold by a distributor and IC 6-6-2.5 concerning the number of gallons of special fuel sold by a supplier and the number of gallons of special fuel exported by a licensed exporter or imported by a licensed transporter may be released by the commissioner upon receipt of a written request for the information.

(f) The information described in subsection (a) may be revealed upon the receipt of a written request from the administrative head of a state agency of Indiana when:

- (1) the state agency shows an official need for the information; and
- (2) the administrative head of the state agency agrees that any information released will be kept confidential and will be used solely for official purposes.

(g) The information described in subsection (a) may be revealed upon the receipt of a written request from the chief law

C
o
p
y



enforcement officer of a state or local law enforcement agency in Indiana, when it is agreed that the information is to be confidential and to be used solely for official purposes.

~~(g)~~ **(h)** The name and address of retail merchants, including township, as specified in IC 6-2.5-8-1(j) may be released solely for tax collection purposes to township assessors and county assessors.

~~(h)~~ **(i)** The department shall notify the appropriate innkeepers' tax board, bureau, or commission that a taxpayer is delinquent in remitting innkeepers' taxes under IC 6-9.

~~(i)~~ **(j)** All information relating to the delinquency or evasion of the motor vehicle excise tax may be disclosed to the bureau of motor vehicles in Indiana and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.

~~(j)~~ **(k)** All information relating to the delinquency or evasion of commercial vehicle excise taxes payable to the bureau of motor vehicles in Indiana may be disclosed to the bureau and may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

~~(k)~~ **(l)** All information relating to the delinquency or evasion of commercial vehicle excise taxes payable under the International Registration Plan may be disclosed to another state, if the information is disclosed for the purpose of the enforcement and collection of the taxes imposed by IC 6-6-5.5.

~~(l)~~ **(m)** This section does not apply to:

- (1) the beer excise tax (IC 7.1-4-2);
- (2) the liquor excise tax (IC 7.1-4-3);
- (3) the wine excise tax (IC 7.1-4-4);
- (4) the hard cider excise tax (IC 7.1-4-4.5);
- (5) the malt excise tax (IC 7.1-4-5);
- (6) the motor vehicle excise tax (IC 6-6-5);
- (7) the commercial vehicle excise tax (IC 6-6-5.5); and
- (8) the fees under IC 13-23.

~~(m)~~ **(n)** The name and business address of retail merchants within each county that sell tobacco products may be released to the division of mental health and addiction and the alcohol and tobacco commission solely for the purpose of the list prepared under IC 6-2.5-6-14.2.

SECTION 19. IC 6-8.1-10-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2009]: **Sec. 3.5. If a person fails to file a return on or before the due date as required by IC 6-3-4-1(1) or**

**C
O
P
Y**



IC 6-3-4-1(2), where no remittance is due with the return, the person is subject to a penalty of ten dollars (\$10) per day for each day that the return is past due, up to a maximum of five hundred dollars (\$500).

SECTION 20. IC 6-8.1-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) If a person makes a tax payment with a check, **credit card, debit card, or electronic funds transfer**, and the department is unable to obtain payment on the check, **credit card, debit card, or electronic funds transfer** for its full face amount when the check, **credit card, debit card, or electronic funds transfer** is presented for payment through normal banking channels, a penalty of ten percent (10%) of the unpaid tax or the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, whichever is smaller, is imposed.

(b) When a penalty is imposed under subsection (a), the department shall notify the person by mail that the check, **credit card, debit card, or electronic funds transfer** was not honored and that the person has ten (10) days after the date the notice is mailed to pay the tax and the penalty either in cash, by certified check, or other guaranteed payment. If the person fails to make the payment within the ten (10) day period, the penalty is increased to one hundred percent (100%) multiplied by the ~~face~~ value of the check, **credit card, debit card, or electronic funds transfer**, or the unpaid tax, whichever is smaller.

(c) If the person subject to the penalty under this section can show that there is reasonable cause for the check, **credit card, debit card, or electronic funds transfer** not being honored, the department may waive the penalty imposed under this section."

Page 10, after line 37, begin a new paragraph and insert:

"SECTION 22. [EFFECTIVE JANUARY 1, 2009] **IC 6-2.5-6-1, as amended by this act, applies to reporting periods beginning after December 31, 2008.**

SECTION 23. [EFFECTIVE JULY 1, 2008] **IC 6-2.5-6-9, as amended by this act, is intended to be a clarification of the law and not a substantive change in the law.**

SECTION 24. [EFFECTIVE JANUARY 1, 2008 (RETROACTIVE)] **IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2007.**

SECTION 25. [EFFECTIVE JANUARY 1, 2009] **IC 6-3-4-1.5, as amended by this act, applies to adjusted gross income tax returns filed after December 31, 2008.**

SECTION 26. [EFFECTIVE JANUARY 1, 2009] **IC 6-3.1-21-6 and IC 6-5.5-1-2, both as amended by this act, and IC 6-5.5-1-21**

**C
o
p
y**



and IC 6-8.1-10-3.5, both as added by this act, apply to taxable years beginning after December 31, 2008.

SECTION 27. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 19 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 10, Nays 0.

**C
o
p
y**

